

REMARKS

Claims 1-18 are currently pending in the captioned application.

Claims 1 and 12 have been amended in view of the disclosure in US Pat. No. 6,446,495 ("Herrlein"). Support for this amendment is found throughout the specification at, for example, page 5, line 15 to page 6, line 10.

In addition, the abbreviation "MVTR" has been defined in claims 1 and 12. The term "of" has been removed from claim 3 and a typographical error in claim 10 concerning "a surgical dressing" has been corrected.

It is submitted that no new matter has been added by the above amendments.

Indefiniteness Rejection

Claims 1-11 were rejected under 35 USC §112, second paragraph. (Paper No. 3 at 2.) For the reasons set forth below, the rejection is traversed.

In making the rejection, the Examiner asserted that:

Claim 1: the acronym MVTR is unclear from the claims alone. The Examiner suggested writing out the name of MVTR in claim 1. The Examiner's suggestion is most appreciated. Claims 1 and 12 have been amended accordingly. It is believed that this ground of rejection is now moot and should be withdrawn.

Claim 3, the phrase "wherein, the MVTR of from about 6000 g/m²/24hrs" was alleged to be indefinite. The claim has been amended to delete the term "from." It is believed that this amendment has rendered this ground of rejection moot and it should be withdrawn.

Claim 10, the phrase "an incontinence device, a, surgical dressing" was alleged to be indefinite. The claim has been amended to delete the comma between the "a" and "surgical dressing". It is believed that this amendment has rendered this ground of rejection moot and it should be withdrawn.

Anticipation Rejection

Claims 1-3, 6-8, 10, and 11 were rejected under 35 USC §102(e) as anticipated by Herriein. (Paper No. 3 at 3.)

For the reasons set forth below, the rejection, respectfully is traversed.

Herriein discloses

The present invention provides a new method for assessing disposable absorbent articles with regard to their impact on skin aeration by measuring relative humidity values in a mannequin test set up.

(Abst.)

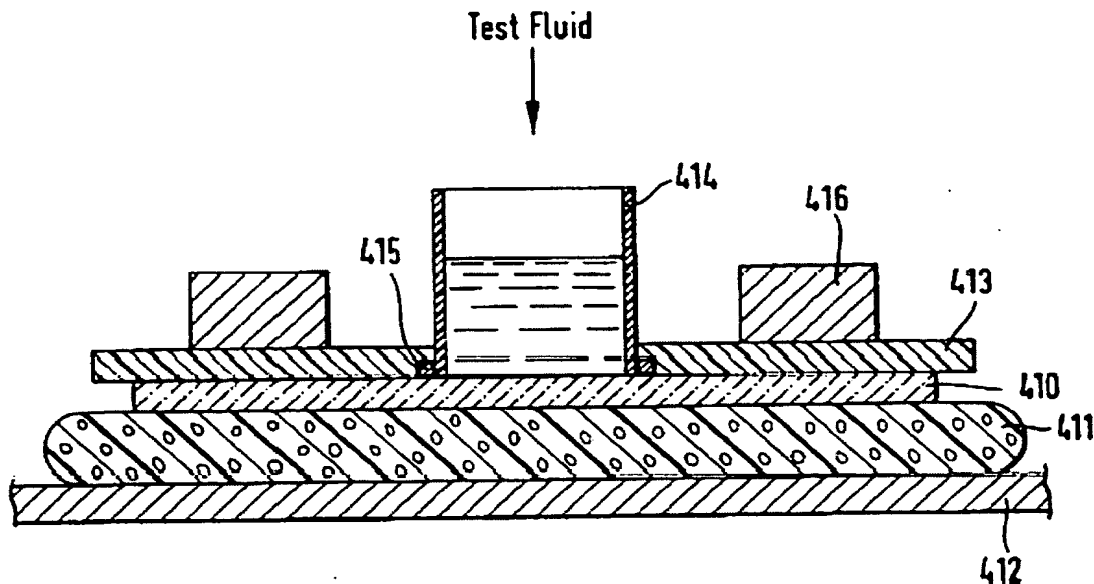


Fig. 2

Referring to FIG. 2, an absorbent structure (410) is loaded with a 75 ml gush of synthetic urine at a rate of 15 ml/s using a pump (Model 7520-00, supplied by Cole Parmer Instruments, Chicago, U.S.A.), from a height of 5 cm above the sample surface. The time to absorb the urine is recorded by a timer. The gush is repeated at precisely 5 minute gush intervals until the article is sufficiently loaded. Current test data are generated by loading four times.

The test sample, which can be a complete absorbent article or an absorbent structure comprising an absorbent core, a topsheet, and a backsheet, is arranged to lie flat on a foam platform 411 within a perspex box (only base 412 of which is shown). A perspex plate 413 having a 5 cm diameter opening in its middle is placed on top of the sample on the loading zone of the structure. Synthetic urine is introduced to the sample through a cylinder 414 fitted, and glued into the opening. Electrodes 415 are located on the lowest surface of the plate, in contact with the surface of the absorbent structure 410. The electrodes are connected to the timer. Loads 416 are placed on top of the plate to simulate, for example a baby's weight. A pressure of about 50 g cm⁻² (0.7 psi) is achieved by positioning weights 416, e.g. for the commonly available MAXI size 20 kg.

(col. 8.)

In order to improve the rewet performance of such articles, the core has been modified by the following steps:

First, chemically treated stiffened cellulosic material (CS) supplied by Weyerhaeuser Co., US under the trade designation of "CMC" functioning as an acquisition/distribution layer has a basis weight of about 590 g/m². Second, an additional acquisition layer is introduced between the top-sheet and said chemically treated stiffened cellulose layer, namely a high-loft chemically bonded nonwoven as supplied by FIBERTECH, North America under the designation type 6852. It is a chemically bonded PET fibre web of a basis weight of 42 g/m² and a width of 110 mm over the full length of the absorbent core.

Thirdly, the cellulose material usage in the storage core underneath the chemically treated stiffened cellulosic material is reduced to about 11.5 g per pad. Fourth, the amount of superabsorbent material in this storage core is increased to about 16 g per pad. Superabsorbent material was supplied by Stockhausen GmbH, Germany under the trade name FAVOR SXM, type T5318.

Further, the conventional PE-backsheet has been replaced by a non-woven material, namely a hydrophobic, 23 gsm carded PP web such as supplied by SANDLER GmbH, Schwarzbach, FRG, under the designation VP 39522.

As comparative examples, following products have been evaluated:

Comparative example 2 differs only to example 1 in that the backsheet is a microporous film such as commercially available from MITSUI Toatsu, Japan, under the designation ESPOIRE NO.

Comparative example 3 is a commercially available product as marketed by UniCharm Corp. in Japan under the trade designation Moonyman, size 4. This product has a microporous film covering both the core and the chassis regions.

(col. 5.)

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These products have been submitted to the relative absor-
bency mannequin test as well as to the PACORM test, with
following results:

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TABLE 1

Sample	1	2	3
PACORM (mg)	72	72	150
Backsheet MVTR (g/m ² /24 h)	6000	3750	3300
10 relative humidity (%)			
1st gush	48	48	48
+5 min	52	62	69
+25 min	53	59	73
+55 min	53	58	74
15 2nd gush			
+5 min	59	73	92
+25 min	60	76	94
+55 min	61	78	94
20 3rd gush			
+5 min	81	89	93
+25 min	83	90	95
+55 min	83	90	93
4th gush			
25 +5 min	89	92	93
+25 min	80	93	93
+55 min	89	93	92

(col. 6.)

In making the rejection, the Examiner contended that Herriein disclosed the use of an absorbent article (see abstract) with a core and a backsheet (see [sic] figures 2 and 3 [sic]. (Paper No. 3 at 3.) The Examiner further contended that "Herriein discloses the backsheet can have a moisture vapor transmission rate of 6000 g/m²/24hr, and a basis weight of 23 g/m²) (see Sample 1, Table 1 and column 5, lines 21-55.)

As is well settled, anticipation requires "identity of invention." Each and every element recited in a claim must be found in a single prior art reference and arranged as in the claim.

Claims 1 and 12 have been amended to recite that the backsheet is a breathable film backsheet. It is not seen where Herriein provides disclosure of each and every element of the currently pending claims 1 and 12. For this reason, the rejection should be withdrawn.

Because claims 2, 3, 6, 7, 10, and 11 depend from claim 1 and the rejection of claim 1 should be withdrawn, the rejection of claims 2, 3, 6, 7, 10, and 11 should also be withdrawn.

Obviousness Rejection

Claims 4, 5, 12-15, 17, and 18 were rejected under 35 USC §103(a) as being unpatentable over Herriein. (Paper No. 3 at 4.)

For the reasons set forth below the rejection, respectfully is traversed.

Herriein's disclosure set forth above is expressly incorporated herein by reference.

In making the rejection of claims 4, 5, and 12, the Examiner asserted that Herriein teaches the use of the basis weight of 23 g/m². (Paper No. 3 at 4.) The Examiner acknowledged, however, that Herriein differs from the presently claimed invention in that Herriein "fails to disclose the basis weight being between 28 g/m² and 32 g/m² or more specifically 30 g/m²." (*Id.*)

To fill the acknowledged gap, the Examiner relied upon the legal theory that "it has been held that where the general conditions of a claim are disclosed in the [sic] prior art, discovering optimum or workable ranges involves only routine skill in the art." (*Id.*)

The Examiner then concluded that "it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the basis weight between 28 g/m² and 32 g/m² or more specifically 30 g/m²." (*Id.*)

Initially, it is noted that claim 1, from which claims 4 and 5 depend, and claim 12 have been amended to include a breathable film backsheet. It is not seen where the rejection identifies where in Herriein such a limitation can be found or is suggested. Sample 1 of Table 1 has a non-woven material backsheet. (Col. 5, lns. 52-53.) Specifically, the material was described as being a hydrophobic, 23 gsm carded PP web. (Col. 5, lns. 52-54.) The use of this backsheet apparently provided an MVTR reading of 6000 in Table I. Samples 2 and 3, which used microporous films provided an MVTR of 3750 and 3300 respectively. It is respectfully submitted that Herriein does not provide motivation or a suggestion of one of ordinary skill in the art to produce the claimed invention in absence of impermissible hindsight. For this reason, the rejection should be withdrawn.

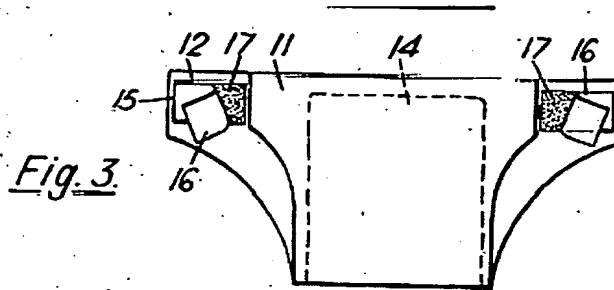
Because claims 13, 14, 17 and 18 depend from claim 12 and the rejection of claim 12 should be withdrawn, the rejection of claims 13, 14, 17 and 18 should also be withdrawn.

Claims 9 and 16 were rejected under 35 USC §103(a) as being unpatentable over Herriein in view of US Pat. No. 3,554,195 ("Murdoch"). (Paper No. 3 at 4.)

For the reasons set forth below the rejection, respectfully is traversed.

Herriein's disclosure set forth above is expressly incorporated herein by reference.

Murdoch discloses



At each end of the marginal back portion of the backing sheet, are tabs, generally indicated at 15, which, in use, overlap the end areas of the front portion, and are provided with adhesive surfaces for securing the end areas of the back portion onto the outer face of the front portion.

As clearly shown in FIG. 3 the tabs 15 have an adhesive surface 17 is protected by a strippable covering 16 of siliconized release paper until the napkin is going to be used. When the napkin is to be fitted onto a baby, the front portion of the napkin is drawn upwardly, as indicated by the arrows 18 in FIG. 2 the protective covering 16 is stripped back and exposes the adhesive surface 17 which is then ready to engage the outer surface of the front portion 11 of the napkin. The covering 16 is preferably coloured for ease of identification.

It will be seen that by varying the position at which the adhesive tab 15 is applied to the front portion 11, a variation in the waist measurement of the napkin is afforded. Variations in the thigh measurements are also afforded by selection of the position at which the tabs are secured to the front portion. (col. 2.)

In making the rejection of claims 9 and 16, the Examiner asserted that Herriein discloses the use of diapers with tape fasteners. (Paper No. 3 at 5.) The Examiner acknowledged, however, that Herriein fails to disclose the use of release paper.

To fill the acknowledged gap, the Examiner relied upon Murdoch as discloses the use of release paper located on adhesive tab fasteners. (*Id.*)

The Examiner concluded that "[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to have the release paper of Murdoch, cover the fasteners of Herriein in order to protect the adhesive before being used. (*Id.*)

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As is fundamental, a *prima facie* case of obviousness must be based on facts, "cold hard facts." *In re Freed*, 165 USPQ 570, 571-72 (C.C.P.A. 1970). When the rejection is not supported by facts, it cannot stand. *Ex parte Saceman*, 27 USPQ2d 1472, 1474 (B.P.A.I. 1993).

It is noted that claim 1, from which claim 9 depends, and claim 12, from which claim 16 depends, have been amended to include a breathable film backsheet. It is not seen where the rejection identifies where in Herriein such a limitation can be found or is suggested. Sample 1 of Table 1 has a non-woven material backsheet. (Col. 5, Ins. 52-53.) Specifically, the material was described as being a hydrophobic, 23 gsm carded PP web. (Col. 5, Ins. 52-54.) The use of this backsheet apparently provided an MVTR reading of 6000 in Table I. Samples 2 and 3, which used microporous films provided an MVTR of 3750 and 3300 respectively. It is respectfully submitted that Herriein does not provide motivation or a suggestion of one of ordinary skill in the art to produce the claimed invention in absence of impermissible hindsight. Nor is it believed that Murdoch closes this gap. For this reason, the rejection should be withdrawn.

Accordingly, entry of the amendments to the claims and allowance of all the claims is respectfully requested. If the Examiner has any questions regarding this paper, please contact the undersigned.

Respectfully submitted,

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